

September 28, 2016

Office of Regulations and Interpretations  
Employee Benefits Security Administration  
Room N-5655  
U.S. Department of Labor  
200 Constitution Avenue NW  
Washington, DC 20210  
Attention: Savings Arrangements Established by State Political Subdivisions for Non-Governmental Employees

Re: RIN 1210-AB76

Dear Employee Benefits Security Administration:

CFED, the Corporation for Enterprise Development, is pleased to submit comments to the Employee Benefits Security Administration (EBSA) on the proposed rule for “Savings Arrangements Established by State Political Subdivisions for Non-Governmental Employees.” CFED is a national, nonpartisan nonprofit organization that works to expand economic opportunity to all Americans by promoting asset-building efforts that expand access to homeownership, education, entrepreneurship and retirement security. CFED is grateful to have this opportunity to comment on these proposed rules that we believe would further expand access to long-term savings for workers currently left out of such opportunities. We strongly encourage EBSA to adopt rules that will expand the previously finalized ERISA safe harbor rules to permit as many qualified political subdivisions as possible to implement retirement savings programs for workers not covered by employer-sponsored plans.

As requested in the proposed rule, our comments below raise four key concerns: 1) the possibility of fluctuating populations among political subdivisions, 2) overlapping qualified subdivisions seeking to establish programs where a state or larger political subdivision also seeks to establish a payroll deduction retirement savings program, 3) demonstrating the capacity and readiness of political subdivisions to implement and administer a program, and 4) solely limiting the qualifications for a political subdivision to those granted authority to operate a program by their respective state governments.

### **Fluctuating Populations of Political Subdivisions**

As the proposed rules address, political subdivisions with the smallest qualifying populations could face doubts and confusions when seeking to establishing a program as to whether they would continue to meet the requirements for the safe harbor should their population drop below that of the least populated state. With respect to these concerns of

fluctuating populations of political subdivisions and the population requirement under paragraph (h)(4)(ii) of the proposed rule, we recommend determinations of whether a political subdivision meets this limitation be made at a fixed point in time upon the establishment of the program. Creating a fixed-point determination removes uncertainty and administrative burden for political subdivisions and relieves a potential chilling effect for the smallest-qualifying subdivisions that may wish to implement such a program. To solidify a fixed-point determination rule, we agree that EBSA should add the phrase “at the time it establishes its payroll deduction savings plan” to the end of paragraph (h)(4)(ii).

*Key Recommendation:*

- Add the phrase “at the time it establishes its payroll deduction savings plan” to the end of paragraph (h)(4)(ii).

### **Overlapping State and Political Subdivision Programs**

The proposed rules recognize a potential conflict arising from situations where political subdivisions take advantage of the safe harbor rules and establish a payroll deduction retirement savings plan prior to its state or an overlapping larger political subdivision that may later seek to establish its own program. We believe these conflicts could be avoided if the rules under paragraph (h)(4)(iii) are revised to exempt programs established in political subdivisions where these pre-established programs are explicitly carved out of a larger state-wide program created later. In situations such as this, where a state later establishes a state-wide program with a carve-out for an existing program, EBSA should provide guidance that the state’s program would continue to meet eligibility for the safe harbor from ERISA under § 2510.3-2 (h).

We further request that, should EBSA permit such carve-out scenarios under these rules, the same guidance be used to permit a larger political subdivision that encompasses a smaller qualifying subdivision with a pre-established program to also implement a program in the area not already covered by the smaller-scale plan. Recognizing that the population qualifications under proposed paragraph (h)(4)(ii) is intended at least in part to serve as an indicator of a political subdivision’s capacity to administer a payroll deduction program, we ask EBSA to issue additional guidance that a larger overlapping political subdivision establishing a program in areas not already covered by a smaller-scale encompassed program would qualify under paragraph (h)(4)(ii) based on the population of the subdivision as a whole and not solely the potentially newly eligible population not already covered under the smaller-scale program. As a hypothetical example under this scenario, we would ask EBSA to issue guidance that, should the city of Detroit enact a local-level program, Wayne County, Michigan would remain eligible to enact a later program of its own for persons not covered under the Detroit program but basing its eligibility under proposed paragraph (h)(4)(ii) on the entire population of Wayne County, inclusive of Detroit.

*Key Recommendations:*

- Allow states seeking to establish a program where political subdivisions currently operate a program under the safe harbor to exempt the pre-established programs from the state-wide system, if:
  - a) Such a scenario is mutually desired by the state and political subdivision, and
  - b) The new state-wide program is not designed to supersede the smaller-scale program.
- Maintain a state's qualification under the safe harbor to establish a separate state-wide plan, even if certain political subdivisions are exempted from coverage due to operating a pre-established program.
- Permit the same exemption in situations where a larger overlapping political subdivision seeks to establish a program covered by the safe harbor where another encompassed political subdivision currently administers a qualifying program.

**Demonstrating capacity and readiness**

We agree with EBSA that the rules should contain some means for determining a political subdivision's capacity and readiness to operate a non-governmental retirement savings program. We further agree that population could be a sufficient qualification for making this determination, in certain situations. However, we do not agree that population, in all cases, should serve as the proxy for determining a political subdivision's capacity and readiness to administer a payroll deduction program. We request EBSA should consider amending paragraph (h)(4) to add a rule to permit "general purpose" political subdivisions that do not meet the population threshold qualification to operate a program under the safe harbor if they a) currently operate a defined benefit pension plan for its governmental employees, and b) are granted explicit authority by their state government to implement a non-governmental payroll deduction retirement savings plan. We do not expect this will greatly increase the number of qualifying political subdivisions covered by the ERISA safe harbor, but we do believe it will have the effect of permitting political subdivisions that can legitimately demonstrate their capacity and readiness to operate a payroll deduction program, regardless of population, to do so safely and efficiently.

*Key Recommendation:*

- Amend paragraph (h)(4) to add a rule to permit general purpose political subdivisions that do not meet the population threshold qualification under paragraph (h)(4)(ii) if they:
  - a) Currently operate a defined benefit pension plan for its governmental employees, and
  - b) Are granted explicit authority by their state government to implement a non-governmental payroll deduction retirement savings plan.

**Solely Limiting Qualifications to State-Granted Authority**

The proposed rules also ask commenters to consider fewer limitations for political subdivisions than currently included in proposed paragraph (h)(4). As mentioned above, we agree with EBSA that, in order for their payroll deduction retirement savings program to qualify for the ERISA safe harbor, political subdivisions should demonstrate some degree of their capacity and readiness to administer such a program. As such, we do not believe the proposed limitation under paragraph (h)(4)(i) on its own is a sufficient limitation to ensure the operation of safe, effective and robust non-governmental payroll deduction retirement savings programs. We encourage EBSA to amend the limitations of proposed paragraph (h)(4) to meet the recommendations we describe in the sections above to ensure such savings programs may operate.

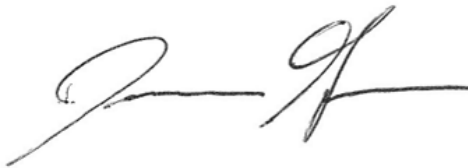
*Key Recommendation:*

- Amend the limitations on qualifying subdivisions with the aforementioned amendments.

Please direct questions or comments relating to these recommendations to Holden Weisman, [hweisman@cfed.org](mailto:hweisman@cfed.org).

Thank you for your consideration.

Sincerely,

A handwritten signature in dark ink, appearing to read 'J. Greer', with a stylized flourish at the end.

Jeremie Greer  
Vice President for Policy and Research,  
CFED